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File No. *O. Guardians
and Wards*

Legal DEPARTMENT 47.

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~~File~~ Subject:—

*Opinions under the Guardian
and Wards Act, 1890.*

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Sections 20(1), 27
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122, 405 and 415.
Whether there is sufficient
evidence to prosecute
whether Pr. D.G. Karnik
Deputy Magistrate of the
District Court, Ahmedabad
for original breach of trust,
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Office of the P.L.A.

It appears that Mr. D.C. Karnik was Deputy Magistrate of the District Court, Ahmedabad, in 1945 and as such, was in charge of the minors' estates. One of such estates belonged to the minor Farnalal Thandulal of Ahmedabad. Part of that estate consisted of three rooms bearing Nos. 5033 to 5091 situate in Jamalpur Ward No. 1 near Tajpur Kaji's Mota Bamb at Ahmedabad. These rooms were occupied by three different tenants and one of them was Sulman Ramjuji who approached Mr. Karnik with a request to lease all the three rooms to him. Mr. Karnik made a favorable report to the Assistant Judge and obtained his sanction. In April 1945 Sulman Ramjuji applied for costs of whitewashing and painting these rooms. Mr. Karnik supported his request but the Assistant Judge did not sanction it. Some months later Mr. Karnik again reported to the Assistant Judge for sanctioning some costs of whitewashing without bringing to his notice his previous order. The Assistant Judge ordered that Sulman's son should be kept present before he could sanction the costs, but Sulman's son agreed not to claim the cost of whitewashing. Hence the matter was dropped. The estate of the minor was not in debts and fetched a substantial income. In spite of it, Mr. Karnik, Sulman and his son colluded and conspired with each other and made a fraudulent attempt to obtain the sanction of the Assistant Judge for a private sale of the said three rooms to Sulman. With that end in view, they managed, to obtain an application from Farnalal Thandulal, the personal guardian of the minor, to the effect that the property in question should be sold as the same was situated in a Muslim locality and could fetch ~~xxxxxx~~ a very good price. This Farnalal, being a man of weak intellect, could be easily induced to make such an application. On 25.7.1945 Mr. Karnik submitted a report to the Assistant Judge

supporting the application of Suleman to purchase the property for Rs. 5,680. The Assistant Judge however did not agree to the said proposal but made an order that the property should be sold by public auction after proper publication and that the same should be sold to Suleman in case of equal bids. Then the property as advertised for sale by public auction and the same was published in the issues of Swatantra Bharat and Gujarati Samachar dated 4.8.1945 and 5.8.45 respectively and it was held on 11.8.1945. The auction sale, however, was not held at the time and the place advertised but in the printing works factory of Suleman and it was completed in his name for Rs. 6,511/- a price far below the market price of the said property. Thus the auction was held on Saturday and

the necessary sanction for the sale was obtained from the Assistant Judge on Monday, that is, on 13.8.1945, without bringing to his notice that the sale was held at a different place. Mr. Karnik then got the necessary sale deed executed and registered it in his name by 15-8-1945 after purchasing small pieces of stamps from different vendors. On 20-8-1945 and 1-9-1945 one Chirpa Abdul Karim and another person called Chirpa Haji Abdul made applications to the Asst. Judge complaining against Mr.

Karnik and Suleman regarding the conduct of the auction sale in question and one Ali Bahadur Khan also made an application to the District Judge in connection with this auction sale. The District Judge thereupon called for the papers from the Asst. Judge and on 20-11-1945 made an order directing the institution of a suit against Suleman for setting aside the sale. After going through the necessary papers the Dist. Judge ordered the suspension of Mr. Karnik and an enquiry into his conduct. As many as 18 charges were framed against Mr. Karnik and a departmental enquiry was held by the Asst. Judge. After going through the evidence the Asst. Judge came to the conclusion that the charges of undue favour to Suleman in leasing the rooms and attempting to get costs of whitewashing and colour painting sanctioned were not proved. However, in respect of the other charges that is, the holding of the auction sale at a different time and place and the sale

of the property for an inadequate price, etc., the ^{Assistant} Asst. Judge held them proved, observing that Mr. Karnik's conduct in conducting the auction sale of the property was not fair, not honest and not in the interests of the minor. After receiving the findings of the Asst. Judge in the departmental enquiry, the Dist. Judge called upon Mr. Karnik to show cause why he should not be dismissed from service. The Dist. Judge after hearing Mr. Karnik, came to the conclusion that the charges of misconduct and fraudulent disposal of the property of the minor for an inadequate price were proved, but before he could pass the order of the dismissal, Mr. Karnik resigned. Consequently, his resignation was accepted. But Government desires that Mr. Karnik should be prosecuted in view of the fact that his conduct in connection with the sale of the minor's property was not fair, honest and in the interests of the minor ward. The R.L.A. is requested to advise whether there is sufficient evidence to prosecute Mr. Karnik for criminal breach of trust, cheating and giving false information to a public servant or any other section of the Indian Penal Code.

2 Section 405 of the I.P.C. defines criminal breach of trust in the following terms.

"Whoever being in any manner entrusted with property dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract express or implied which he has made touching the discharge of such trust or wilfully suffers any other person so to do commits criminal breach of trust."

To prove the offence of criminal breach of trust against Mr. Karnik it would be necessary to prove that Mr. Karnik was entrusted with the property of the minor ward and that he disposed of that property dishonestly in violation of any direction of law prescribing the mode in which such

trust was to be discharged. Property referred in the section must be ~~moveable~~ property and criminal breach of trust cannot be committed in respect of immoveable property (see *Jugdown Singh*.

~~1st~~ I.L.B. 23 Cal. 372). This view is doubted on the ground that the offence of criminal breach of trust is committed not only by dishonest conversion but also by dishonest use or disposition and there is nothing in the wording of this section to exempt from the definition of criminal breach of trust, dishonest use or disposal of immoveable property by any person entrusted with dominion over it (See Ratanlal's Law of Crimes, 15th edition, p. 999).

It can, therefore, be fairly assumed that property in section 406, I.P.C. includes immoveable property as well. Mr. Karnik was appointed under the Guardian and Wards Act, 1890 to manage the property of the minor ward Natwarlal. Consequently it could be held that Mr. Karnik was entrusted with property within the meaning of section 406, I.P.C.

3 The next point for consideration would be whether Mr. Karnik dishonestly disposed of that property in violation of any direction of law prescribing the mode in which such trust was to be discharged. Section 20(1) of the Guardian and Wards Act, 1890, *inter alia* provides that a guardian stands in fiduciary relation to his ward and he must not make any profit out of his office. Under section 27 a guardian of the property of a ward is bound to deal with the property as a man of ordinary prudence would deal with it if it were his own and under section 29 the guardian shall not without the previous permission of the court dispose of the ward's property. In the present case Mr. Karnik disposed of the ward's property with the sanction of the court. The order granting sanction is conclusive and the presumption is that the court made an inquiry in the interest of the minor as to the value of the property and sanctioned the transaction only upon proof that it was beneficial to the minor (see *Durgaprasad Kamashwar Prasad* 83 Indian case 243). The court sanction being *prima facie* evidence of the propriety of the transaction, it shifts the onus of proof on to the person impeaching the order.

as fraudulent or improper (see Nallaka Venkotaswami vs. Rajama Veerama 45 Mad. 429). In the present case Mr. Karnik did obtain the sanction of the court and thereby complied with the direction of law contained in section 29. In Rajakristo Biswas 16 W.R. 52, a Police Sub Inspector was in charge of a cattle pound in which a pony was impounded which was put to sale. The cattle Trespass Act under which the sale was held prohibited ~~any~~ a police officer from purchasing pound cattle directly or indirectly. ~~any~~ The accused purchased the pony benami but it was found that the approximate value of the animal was realised. It was held that though the accused had disposed of the pony in violation of the direction of the law, his act was not punishable under section 405 I.P.C. because it was not dishonest which it would have been if the price paid had been below its approximate value. In the present case there is abundant evidence to prove that the property was sold for an inadequate price and thereby wrongful loss was caused to the minor, but that alone would not be sufficient to prove the charge of criminal breach of trust against Mr. Karnik. What is also necessary to prove is that the said disposal of the property was in violation of any direction of law. As stated above, Mr. Karnik did obtain the sanction of the court and thereby fulfilled the direction of the law contained in section 29 of the Guardians and Wards Act. Whether he obtained ~~the~~ such sanction by wilful concealment of facts regarding the sale is not a matter which can be taken into account for the purposes of proving the charge of criminal breach of trust. Since Mr. Karnik did not dispose of the property in violation of any direction of law, it appears that the charge of criminal breach of trust cannot be proved against him even though the sale

transaction was to the prejudice of the minor. The fact of that Mr. Karnik standing as he did in a fiduciary relation to his ward should not have disposed of the property for such an inadequate price would certainly be a good ground for holding him liable for damages under section 37 of the Guardians and Wards Act, but that cannot warrant his prosecution for criminal breach of trust.

4 Cheating is defined in section 415 I.P.C., in the following terms: —

"Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and which such act or omission causes or is likely to cause damage or harm to that person in body, mind reputation or property is said to cheat". Explanation to that section states that a dishonest concealment of facts is a deception within the meaning of this section. The question for consideration is whether Mr. Karnik, by deceiving the Asst. Judge, intentionally induced that person so deceived to accord sanction to the sale of the minor's property which he ^{would not} have done if he were not so deceived and whether such deception was caused by a dishonest concealment of facts. Mr. Karnik did not hold the auction sale at the time and place advertised for the auction sale. It appears that these facts were not brought to the notice of the Asst. Judge who sanctioned the sale. The Guardians and Wards Act, 1890 does not prescribe any

any procedure for holding the auction sales by a guardian.
 All that ~~transacted~~ section 29 says ^{is} that the property of the ward
 shall not be sold without the previous permission of the
 court. It is, therefore, apparent that Mr. Karnik was not
 required by the provisions of the Guardian and Wards Act
 to report to the Asst. Judge that he held the auction sale
 in a particular manner. Concealment of any facts to deceive
 a person must be dishonest. Under explanation to section 115
 I.P.C. an improper concealment or a suppression of a
 material fact which the party concealing is legally bound to
 disclose and of which the other party has a legal right to
 insist that he shall be informed is fraudulent. Where the
 cheating consists in concealment, it must be shown that ^{suppression was} was
 a violation of a legal duty or it was an illegal omission in
 effect. (See Bishan Das 27 Allahbad 561) As stated above, Mr
 Karnik was not required by the provisions of the Guardians
 and Wards Act to disclose to the Asst. Judge all the facts re-
 lating to the auction sale although such disclosure would fa-
 facilitate the obtaining of the sanction of the court. Further,
 there is nothing on record to show that the Asst. Judge would
 not have given his sanction to the sale of the property of the
 minor if the irregularities in holding the auction sale were duly
 brought to his notice. Under section 29 of the Guardians and
 Wards Act when permission is applied for under this section
 the court ought to enquire into the circumstances of the case
 and determine whether the proposed dealing in property would be for
 the minor's benefit (see Tarnikumar v. Shrichand A.I.R. 1925 Cal
 1160). Consequently even if the irregularities of the auction sale
 had been brought to the notice of the Asst. Judge it could still
 have been open to him to sanction the sale provided he was
 satisfied that the transaction was for the minor's benefit. Further
 it was open to the Asst. Judge to make independent enquiries in-
 stead of blindly accepting the report of Mr. Karnik. That being the
 position, it is difficult to say that there was any dishonest
 concealment of facts and the Asst. Judge was deceived to sanction

the sale . At any rate there is no evidence on ~~an~~ record on this point. Consequently the prosecution of Mr. Karnik for the offence of cheating would be doubtful.

5 Section 152 of the Indian Penal Code provides;

"Whoever gives to any public servant any information which he knows or believes to be false intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant-(a) to do or omit anything which such public servant ought not to do ^{or} omit if the true state of facts ~~respe~~
~~cting~~ which such information is given or were known to him, or (b) to use the lawful power of such public servant to the injury or annoyance of any person shall be punished with imprisonment, etc."

In the present case, Mr. Karnik did give the information to the Asst. Judge by his report that the auction sale was properly held and this statement was false to his knowledge; and by giving such information he caused the Asst. Judge to sanction the sale which he ought not to have done. Consequently it appears that Mr. Karnik can be prosecuted for the offence under section 152 of the I.P.C but it is a minor offence . It is therefore, for Government to decide whether it is worth while to prosecute him under section 152, I.P.C.

Id/ D.V.V.

Remembrancer of Legal Affairs

O.S. to H.D. No. 8432, dated the 19th August 1947.